

APPENDIX A

PERMITTING AND LICENSING ACTIONS REQUIRED FOR PROJECT IMPLEMENTATION

County, state and federal permits and approvals necessary for the construction, operation, maintenance, and abandonment of CES's and MPC's proposed project are described below and listed in Table A-1.

Montana Department of Environmental Quality

The Montana Environmental Policy Act (MEPA) requires an environmental review whenever a State agency intends to issue a lease, permit, license, certificate or other entitlement for use or permission to act by the agency, either singly or in combination with other state agencies (75-1-201, MCA). The Montana DEQ has received applications and proposes to grant permits to discharge process wastewater and air emissions from the Silver Bow generation plant and pipeline compressor stations. This appendix describes the five permitting actions currently under consideration by the DEQ (listed in Section 1.1 of the EIS) and additional permitting, licensing or certificate actions that would be required by the DEQ, other State agencies, federal agencies and local agencies for the completion of the Silver Bow generation project. The DEQ has determined that an Environmental Impact Statement is the appropriate form of environmental review due to the potential for significant impacts from agency actions and resultant project sponsored activities. Because CES and MPC have proposed to seek and comply with all applicable permits, licenses and certifications, the conditions of these permits are considered part of the Proposed Action.

Water Protection Bureau

The DEQ, under authority of the Montana Water Quality Act (75-5-101 *et seq*) regulates the discharge of pollutants into state waters through the adoption of water quality standards and the permit process. Water quality standards specify what changes in water quality are allowed during the use of state waters and establish a basis for wastewater discharge permitting. CES and MPC would have to obtain the following Montana Pollutant Discharge Elimination System (MPDES) permits to complete the Silver Bow generation project:

- MPDES permit to CES for wastewater discharge from the proposed Silver Bow generation plant operations.
- MPDES permit to MPC for hydrostatic testing wastewater discharge from proposed Silver Bow generation project pipeline construction activities.

The DEQ is authorized under the Montana Water Quality Act (75-5-401 *et seq.*, MCA) to permit proposed construction and industrial activities that would result in discharge of storm water or wastewater to Waters of the State. The Silver Bow generation project would require the granting of the following permits:

- MPDES General Permit for Storm Water Discharges Associated with Construction Activity to CES for storm water discharged during construction activities at the proposed generation plant site (75-5-401 *et seq.*, MCA).
- MPDES General Permit for Storm Water Discharges Associated with Industrial Activity to CES for storm water discharged during operation of the proposed generation plant site (75-5-401 *et seq.*, MCA).
- MPDES General Permit for Storm Water Discharges Associated with Construction Activity to Montana Power Company (MPC) for storm water discharged during construction activities within the pipeline construction right-of-way (75-5-401 *et seq.*, MCA).

The Montana DEQ must provide 401 Water Quality Certification prior to issuance of Corp of Engineers permits for disturbance of rivers, streams, lakes or jurisdictional wetlands (ARM 17.30.101 *et seq.*). The certification process is handled internally through agreements between the Army Corps of Engineers, the U.S. Environmental Protection Agency, and the DEQ.

The DEQ and, in some cases, the Montana Fish, Wildlife and Parks, may authorize short-term water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects under MCA 75-5-318 (318 Permit). Each authorization must include conditions that minimize, to the extent practicable, the magnitude of any change in water quality and the length of time during which any change may occur. The authorization must also include site-specific conditions that ensure that the activity is not harmful, detrimental, or injurious to public health and the uses of state waters and that ensure that existing and designated beneficial uses of state water are protected and maintained.

Standard 318 Permitting Conditions For Pipeline Crossings

1. Construction activities in or near the watercourse are to be limited to the minimum area necessary, and conducted so as to minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation,
2. The use of machinery in the watercourse shall be avoided unless absolutely necessary. To prevent leaks of petroleum products into waterways, no defective equipment shall be operated in the watercourse or adjacent areas capable of contributing surface flow to the watercourse,
3. Precautions shall be taken to prevent spillage of any petroleum products chemicals or other deleterious material in or near the watercourse, and no equipment shall be fueled or serviced in adjacent areas capable of contributing surface flow to the watercourse,
4. All disturbed areas on the streambank and adjacent areas created by the construction activity shall be protected with temporary erosion control during construction activities. These areas shall be reclaimed with appropriate erosion control measures and revegetated to provide long-term erosion control,
5. Any excess material generated from this project must be disposed of above the ordinary high water mark, not classified as a wetland, and in a position not to cause pollution to State waters,
6. Clearing of vegetation will be limited to that which is absolutely necessary for construction of the project,
7. The use of asphalt or petroleum-based products as riprap is strictly prohibited. Its use as fill material is also prohibited if it is placed in a location where it is likely to cause pollution of State waters,
8. This authorization does not authorize a point source surface water discharge. A MPDES permit is required for said discharge, and
9. The applicant must conduct all activities in full and complete compliance with all terms and conditions of any permit for this activity issued pursuant to the Montana Natural Streambed and Land Preservation Act (310 permit) or the Montana Stream Protection Act (124 permit), and any valid Memorandum of Agreement and Authorization (MAA) negotiated for this activity.

Community Services Bureau

A water system that regularly serves at least 25 persons daily for a period of at least 60 days in a calendar year is regulated as a public water supply by the Montana DEQ (75-6-101, *et seq.*, MCA). CES will be required to submit plans and specifications for construction of the proposed water supply well to DEQ for approval. Applicants with an approved PWS have developed a Source Water Assessment and Delineation Report in accordance with DEQ Circular PW 6.

Air and Waste Management Bureau

Under the Prevention of Significant Deterioration (PSD) regulations contained in the Administrative Rules of Montana (ARM) Title 17 Chapter 8 subchapter 8, any major source (as defined by PSD) is required to obtain a PSD permit prior to operation or construction of the facility. The PSD program was designed to require a source to demonstrate that there would be no significant deterioration to the area where the source proposes to operate. Under DEQ's regulation, one air quality preconstruction permit can meet the requirements of PSD and the state air quality preconstruction permit regulations. DEQ proposes to grant the following permits:

- Air quality preconstruction permit to CES for the Silver Bow generation facility prior to operation or construction of the facility under the Prevention of Significant Deterioration (PSD) regulations contained in the ARM Title 17 Chapter 8 subchapter 8.
- Air quality preconstruction permit to MPC for a natural gas compression stations prior to operation or construction of the facility under the Prevention of Significant Deterioration (PSD) regulations contained in the ARM Title 17 Chapter 8 subchapter 8.
- Two alterations to existing air quality permits to MPC for the operation of two natural gas compressor stations (Montana Clean Air Act 75-2-200 *et seq.*, MCA, and ARM 17.8.700 *et seq.*)

Montana Dept. of Natural Resource and Conservation

The Montana DNRC is not required to analyze or consider the potential impacts of activities that may occur on private land in conjunction with or as a result of granting access. The Montana DNRC evaluates the impacts of easement requests and the associated project on the management of state lands.

Trust Land Management Bureau

The Montana DNRC Board of Land Commissioners may grant an Easement for Right of Way (ROW) across any portion of state lands, including the beds of navigable waterways. Permits, licenses or easements for construction activities on state-owned lands are authorized under Title 77, MCA. The Right-of-Way Easement on State Lands grants a permanent ROW easement for the life of the project.

Water Rights Bureau

MPC has proposed using existing private water rights on the Silver Lake Water Supply for obtaining the water necessary to complete hydrostatic testing of the generation plant prior to operation. In addition, water rights will need to be obtained for the Cut Bank, Choteau, Wolf Creek, Silver City, and Morel Tap segments to complete hydrostatic testing of these segments. See Table 2.10 in Chapter 2 for more information.

Flood Plain Section

MPC must seek a permit from the DNRC for disturbance of a designated 100-year floodplain (ARM 36.15.602). In some cases, the local authorities have authorization to grand the permit.

Montana Department of Transportation

The Montana Department of Transportation (MDOT) grants state highway encroachment permits for pipeline and access roads that may encroach on state highway rights-of-way.

State Historic Preservation Office

The rules of State Agencies require consultation with the State Historic Preservation Office (SHPO) to determine whether an applicant's request for an approval/permit for a proposed action on state-owned lands would impact historic properties (Montana Antiquities Act, 22-3-421 through 422, MCA). If the proposed action would affect historic properties, a mitigation plan must be established for sites that are considered eligible for listing or listed on the National Register of Historic Places, and must determine a method for proceeding on the proposed action. Compliance with the SHPO consultation requirement has occurred for all state-owned lands potentially affected by the proposed pipeline project, and no mitigation plan has been required.

Prior to approval of those portions of the proposed pipeline that cross BOR lands, these agencies must comply with Section 106 of the National Historic Preservation Act, the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act and 36 CFR 800. These authorities mandate identification of cultural resources which would be potentially affected by the project and that these federal agencies address the effects of the undertaking on such resources.

U.S. Army Corps of Engineers

The permitting and regulatory authority for the discharge of dredged or fill materials related to construction of pipelines in wetlands and other "Waters of the United States" is Clean Water Act (40 CFR 323.1 and 330) and the Environmental Protection Agency (EPA) pursuant to Section 404(b)(1) guidelines (40 CFR 230). Temporary disturbance associated with pipeline construction across U.S. Army Corps of Engineers (COE) jurisdictional areas (wetlands and non-wetlands Waters of the U.S.) can be authorized under Nationwide or Individual Section 404 Permits.

MPC's application to the COE for pipeline crossings of wetlands and other Water of the U.S. associated with construction of the pipeline will be reviewed by the COE for compliance with Section 404.

Section 401 water quality certification from the state would be required for Section 404 permits authorizing actions that may result in any discharge into Waters of the U.S. State water quality certification must be obtained by the COE from the Water Protection Bureau of the Montana DEQ prior to Section 404 permit authorization by the COE.

U.S. Fish and Wildlife Service

Under the Federal Endangered Species Act (ESA) of 1973, as amended, special protection is provided to any species and its habitat that is listed as endangered or threatened. In accordance with Section 7(c) of the ESA, the U.S. Fish and Wildlife Service (USFWS) has determined that five species of listed wildlife species and one proposed species may be present in the project area. An evaluation of the potential for impact to these species and mitigation measures are included in this Application.

Section 7(c) of ESA requires that federal agencies proposing major construction activities complete a Biological Assessment (BA) to determine the effects or actions of actions on listed and proposed species, and use the BA to determine whether formal consultation would be required. This document includes an evaluation of potential impacts to the listed wildlife species, but is not a formal BA. The evaluation in this document does not identify any significant impacts to the listed wildlife species from the construction and operation of the proposed pipeline on private, state, or Bureau of Reclamation (BOR) lands.

U.S. Bureau of Reclamation

The Bureau of Reclamation grants special use permits for the pipeline crossing of BOR lands. BOR would also evaluate and grant written permission for the crossing of a BOR easement on non-BOR lands. National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) compliance would also be required.

Table A.1 provides a summary of the Federal, state, and local permits, approvals, and authorizing actions required for construction and operation of the Silver Bow Generation Project.

Table A.1 Federal, State, Local Permits, Approvals, and Authorizing Actions

Issuing Agency	Permit/ Approval Name	Nature of Permit	Authority
Federal Government			
Advisory Council for Historic Preservation	Section 106, National Historic Preservation Act (NHPA)	Provides consultation under Section 106 for all project features that may potentially affect cultural resources that are either eligible for listing or listed in the National Register of Historic Places (NRHP)	National Historic Preservation Act of 1966 (16 USC 470)
Federal Aviation Administration	Notice of Proposed Construction or Alteration	Tower location and height relative to air traffic corridors	49 USC 1501; 13 CFR 77 Objects affecting navigable air space
U.S. Army Corps of Engineers	Section 404 Permit (Clean Water Act) Nationwide Permit/Individual Permit	Controls discharge of dredged or fill materials in wetlands and other waters of the U.S.	Section 404 of the Clean Water Act (33 CFR 323.1,330)
U.S.D.I Fish and Wildlife Service	Informal Section 7 consultation	Identifies any species and its habitat listed as endangered or threatened that may be impacted by the project.	Federal Endangered Species Act of 1973, as amended
U. S. D.I Bureau of Reclamation	Special Use permit for pipeline crossing of Bureau of Reclamation (BOR) lands	Grants special use permits for the pipeline crossing of BOR lands	NEPA (42 USC 4321) Consultation and Concurrence
U.S. Department of Defense/U.S. Air Force	Written permission for BOR easement crossing on non-BOR lands Review Authority	Grants written permission for the pipeline crossing of BOR easement on non-BOR lands Reviews construction plans to ensure that trenching would not disturb buried cables connecting Minuteman missile silos	Consultation and Concurrence
U.S. Environmental Protection Agency	Section 309 (Clean Air Act)	Ensures the project complies with Section 309 of the Clean Air Act with regard to generation plant and pipeline construction activities	40 CFR Subchapter C, Air Programs
State Government			
Montana Department of Environmental	Section 401 Water Quality Certification	Provides a review of potential adverse water quality impacts associated with discharges of	Section 401 of the Clean Water Act

Issuing Agency	Permit/ Approval Name	Nature of Permit	Authority
Quality		dredged or fill materials in wetlands and other waters of the U.S.	
	MPDES Wastewater Discharge Permit	Permits construction and industrial activities that would result in the discharge of wastewater to Waters of the state	Montana Water Quality Act (75-5-401 et seq., MCA)
	General Discharge Permit for Stormwater Associated with Construction Activities	Permits construction activities that would result in the discharge of stormwater to Waters of the state	Montana Water Quality Act (75-5-401 et seq., MCA)
	General Permit for Stormwater Discharges Associated with Industrial Activity	Permits construction and industrial activities for the Generation Plant that would result in the discharge of stormwater to Waters of the state	Montana Water Quality Act (75-5-401 et seq., MCA)
	General Discharge Permit for Stormwater Associated with Construction Activity	Permits construction activities for the pipeline that would result in the discharge of stormwater to Waters of the state	Montana Water Quality Act (75-5-401 et seq., MCA)
	318 Authorization short-term turbidity	Authorizes a short-term water quality standard for turbidity related to construction activity	Montana Water Quality Act (75-5-101 MCA)
	Air Quality Pre-construction Permit	Permit for the construction, installation and operation of equipment or facilities that may directly or indirectly cause or contribute to air pollution.	75-2-211, MCA: Pre-construction permit
	Air Quality Operating Permit	Permit for the construction, installation and operation of equipment or facilities that may directly or indirectly cause or contribute to air pollution.	75-2-217, MCA: Operating permit
	Prevention of Significant Deterioration Permit (PSD)	Permit when a major new source of air pollution is proposed to be constructed or modified in an area designated as attainment or unclassified for an ambient or quality standard.	ARM 17.8.801 et seq.
Montana DEQ (continued)	New Source		

Issuing Agency	Permit/ Approval Name	Nature of Permit	Authority
Montana Joint Application	Review in Non-attainment Areas	Permitting for major new or modified sources of air pollution construction in or near areas that are designated as non-attainment for an ambient air quality standard.	ARM 17.8.901-906
	310 Permit	Permits construction activities in or near perennial streams on public and private lands	Montana Natural Streambed and Land Preservation Act (75-7-101 et seq., MCA)
	Floodplain Development Permit	Allows construction activities within a designated 100-year floodplain	Montana Floodplain and Floodway Management Act (76-5-401 through 406, MCA)
Board of Land Commissioners	Easement/Land Use License	Authorizes construction activities on state trust lands and navigable waters in Montana	Title 77, MCA
Montana Department of Natural Resources and Conservation	Possible pre-construction authorization	Would authorize construction prior to easement grant by the Board of Land Commissioners	85-2-402 and 85-2-407 MCA
	Temporary water right use change	Would allow temporary change in approved use of existing water right for hydrostatic testing of the pipeline	
	Change of Use for Generation Plant water	Would allow use of existing water right for the Generation Plant	
Montana Department of Transportation	Utility Crossing Permit	Grant state highway utility crossing permits for pipeline and access roads that may encroach on state highway rights-of-way	RW131 and/or RW20
Montana State Historic Preservation Office	Section 106 of the National Historic Preservation Act	Consults with project applicants and state agencies regarding impacts on cultural resources that are either listed or eligible for listing on the NRHP.	Montana Antiquities Act (22-3-421 through 442, MCA)
Local			

Issuing Agency	Permit/ Approval Name	Nature of Permit	Authority
Government			
County Conservation Districts	310 Permit Montana Joint Application	Permits construction activities in or near referenced streams on public and private lands. See Montana Department of Environmental Quality Montana Joint Application	Montana Natural Streambed and Land Preservation Act (75-7-101 et seq., MCA)
County Weed Control Districts	Noxious weed management program	Provides containment, suppression, and eradication of noxious weeds	Title 7 (7-22-2101-2153, MCA)
County Floodplain Administrators	Floodplain Development Permit Montana Joint Application	Allows construction activities within a designated 100-year floodplain. See Montana Department of Environmental Quality Montana Joint Application	Montana Flood Plain and Floodway Management Act (76-5-401 through 406, MCA)
Boards of County Commissioners	Easement grants and road-crossing permits	Consider issuance of right-of-way easement grants and road-crossing permits for county property and roadways	
Silver Bow County Zoning Compliance Silver Bow County Building Permit	Silver Bow TIFID	Zoned RM2	
Deer Lodge County	Development Permit	Permit for all land development and building activity in the county	76-2-301, MCA, et seq. 76-3-501, MCA, et seq. 67-6-20, MCA, et seq. 76-1-606, MCA